

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) Ordinance No. 07-1136
METRO CODE CHAPTER 2.21 (CLAIMS)
UNDER BALLOT MEASURE 37) FOR)
TREATMENT OF CLAIMS AGAINST) Introduced by Michael Jordan, Chief Operating
METRO UNDER ORS 197.352 AND) Office, with concurrence by David Bragdon, Metro
DECLARING AN EMERGENCY) Council President

WHEREAS, the Metro Council adopted Metro Code Chapter 2.21 by Ordinance No. 05-1087A [For the Purpose of Adopting a Process for Treatment of Claims Against Metro Under Ballot Measure 37 by Adding Chapter 2.21 to Title II of the Metro Code (Administration and Procedure)], effective December 21, 2005; and

WHEREAS, the Metro Council has heard and entered final orders disposing of seven claims for compensation brought under Metro Code Chapter 2.21, the experience from which leads the Council to clarify its basis for determining whether a land use regulation has had the effect of reducing the fair market value of a claimant's property; and

WHEREAS, the Metropolitan Policy Advisory Committee has reviewed the proposed amendments and recommends that the Metro Council adopt them; and

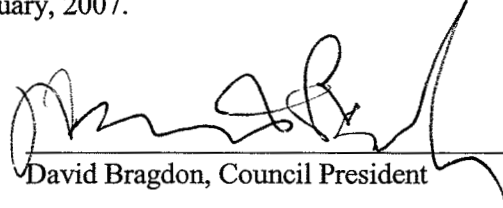
WHEREAS, the Metro Council held a public hearing on the proposed amendments on January 11, 2007, and has considered the testimony; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Chapter 2.21 of Title II of the Metro Code, Claims Under ORS 197.352 (Ballot Measure 37), is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance.
2. The Findings of Fact and Conclusions of Law, attached and incorporated into this ordinance as Exhibit B, explain how the amendments comply with the Regional Framework Plan and state law.
3. This ordinance is necessary for the immediate preservation of the welfare of the people of the region because a large number of claims under Chapter 2.21 of Title III of the Metro Code has been filed recently to meet a deadline in ORS 197.352. The ordinance makes

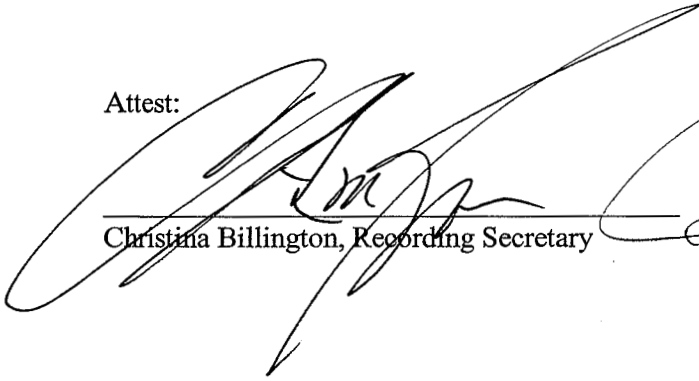
significant changes to the way Metro evaluates claims. It is essential that claimants and the people of the region know about these changes as soon as possible because Metro must respond to the claims within 180 days after they are filed. An emergency is therefore declared to exist. This ordinance shall take effect immediately upon adoption, pursuant to Metro Charter section 39(1).

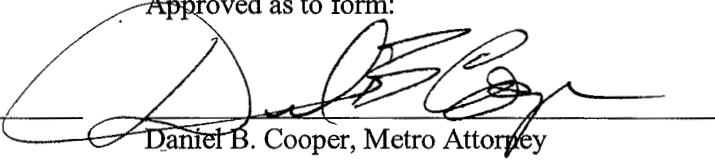
ADOPTED by the Metro Council this 11th day of January, 2007.


David Bragdon, Council President

Attest:

Approved as to form:


Christina Billington, Recording Secretary


Daniel B. Cooper, Metro Attorney

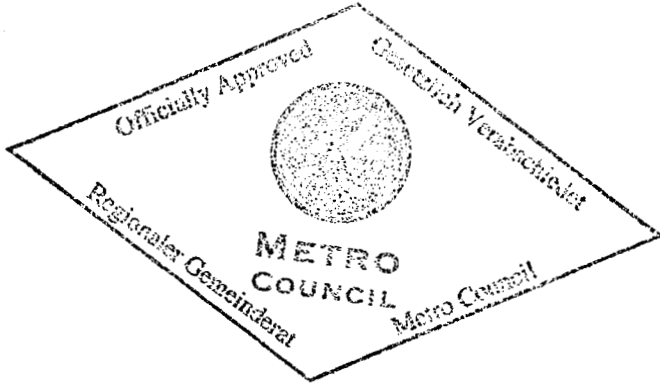


Exhibit A to Ordinance No. 07-1136

CHAPTER 2.21

CLAIMS UNDER ORS 197.352 (BALLOT MEASURE 37)

SECTIONS	TITLE
2.21.010	Purpose
2.21.020	Definitions
2.21.030	Filing a Claim
2.21.040	Review of Claim by Chief Operating Officer and Recommendation
2.21.050	Hearing on Claim before Metro Council
2.21.060	Action on Claim by Metro Council
2.21.070	Conditions on Compensation or Waiver
2.21.080	Fee for Processing Claim

2.21.010 Purpose

This chapter establishes a process for treatment of claims for compensation submitted to Metro under ORS 197.352 (Ballot Measure 37). Metro adopts this chapter in order to afford property owners the relief guaranteed them by ~~Ballot Measure 37~~ ORS 197.352 and to establish a process that is fair, informative and efficient for claimants, other affected property owners and taxpayers. It is the intention of Metro to implement ~~Measure 37~~ the statute faithfully and in concert with its other responsibilities, including its Charter mandate to protect the environment and livability of the region for current and future generations.

2.21.020 Definitions

(a) "Appraisal" means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial property, "appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by a written certificate.

(b) "Family member" means the wife, husband, son, daughter, father, brother, brother-in-law, sister, sister-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner of the real property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the real property.

(c) "Land use regulation" means a provision of a Metro functional plan or a land use regulation adopted by a city or county to comply with a Metro functional plan.

(d) "Owner" means the owner of the property, or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

(e) "Reduction in value" means a reduction in the fair market value of real property, or any interest therein, resulting from enactment or enforcement of a land use regulation ~~as of the date the owner makes a written claim for compensation.~~

(f) "Waiver" means action by the Metro Council to modify, remove or not apply the land use regulation ~~resulting in~~ found to have caused a reduction in fair market value.

2.21.030 Filing a Claim

(a) A person may file a claim with Metro for compensation under ~~Measure 37~~ ORS 197.352 without following the process set forth in this chapter. Metro ~~will~~ may give priority to a claim filed under this chapter over claims filed without compliance with this chapter.

(b) A person filing a claim under this chapter must be the owner of the property that is the subject of the claim at the time the claim is submitted to Metro. The person must simultaneously file with Metro all claims against Metro under ~~Measure 37~~ ORS 197.352 that involve the property. The person shall submit the claim or claims to the Chief Operating Officer (COO) and shall include, at a minimum, the following information:

- (1) The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
- (2) A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot(s) of the property, and the date on which the owner acquired the property interest;
- (3) A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;

- (4) ~~A copy of~~ reference to any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation restricts the use of the property;
- (5) A copy of the city or county land use regulations that applied to the property at the time ~~the claimant acquired the property~~ the challenged land use regulations became applicable to, or were enforced against, the property;
- (6) ~~An appraisal that shows the reduction in value of the property that the claimant believes resulted from the land use regulation that restricts the use of the property and the methodology used in the appraisal, such as comparable sales data~~ The claimant's purchase price for the property;
- (7) Evidence of the fair market value of the property prior to the application or enforcement of the challenged land use regulations to the property and the fair market value after application or enforcement of the regulations;
- (~~7~~8) A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation; and
- (~~8~~9) A statement whether the claimant is filing claims with other public entities involving the same property and a copy of any decision made by the entity on the claim.

(c) In addition to the information required by subsection (b) of this section, a person filing a claim under this chapter after December 4, 2006, shall also submit the following information with the claim:

- (1) A copy of the land use application the claimant has filed with the city or county in which the property lies; and
- (2) A copy of the final decision made by the city or county on the claimant's land use application indicating that the city or county applied the challenged land use regulation as a criterion as part of its final decision.

(d) A claim shall not be considered complete for purposes of subsections (4) and (6) of ~~Ballot Measure 37~~ ORS 197.352 until the claimant has submitted the information required by this section.

2.21.040 Review of Claim by Chief Operating Officer and Recommendation

(a) The COO shall review the claim to ensure that it provides the information required by Section 2.21.030. If the COO determines that the claim is incomplete, the COO shall, within 15 business days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the COO does not notify the owner that the claim is incomplete within the prescribed 15 days, the claim shall be considered complete on the date it was filed with the COO.

(b) ~~If the COO receives a completed claim, t~~The COO shall conduct a preliminary review of a claim to determine whether ~~the claim it~~ satisfies all of the following prerequisites for full evaluation of the claim:

- (1) The property lies within Metro's jurisdictional boundary;
- (2) The land use regulation that is the basis for the claim is a provision of a functional plan or was adopted by a city or county to comply with a functional plan; and
- (3) The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.

(c) If the claim fails to satisfy one or more of the prerequisites in subsection (b) of this section, the COO shall prepare a report to that effect and recommend to the Metro Council that it dismiss the claim as provided in Section 2.21.060(a)(1).

(d) If the claim satisfies each of the prerequisites in subsection (b) of this section, the COO shall complete the review of the claim to determine whether:

- (1) The claimant owns an interest in the property and has owned an interest in the property without interruption since the ~~claimant acquired the interest and prior to the~~ effective date of the land use regulation that is the basis for the claim;
- (2) The City, county, regional and state land use regulations that applied to the property at the time ~~the claimant acquired the property~~ the challenged land

use regulation became applicable to, or were enforced against, the property allowed the claimant's proposed use and, if so, what criteria or conditions applied to the proposed use under the regulations;

- (3) The specific, existing land use regulation that allegedly reduced the value of the property allows the proposed use and, if so, what criteria or conditions apply to the proposed use under the regulation;
- (4) The specific, existing land use regulation that allegedly reduced the value of the property is exempt from ~~Ballot Measure 37 under subsection 3 of the measure~~ claims under ORS 197.352(3); and
- (5) If the specific, existing land use regulation that allegedly reduced the value of the property is not exempt ~~from Ballot Measure 37~~ under ORS 197.352(3), the regulation restricts the proposed use and the restriction has reduced the fair market value of the property. In making this determination, the COO will compare the value of the property before application or enforcement of the challenged land use regulation to the property with the value after the application or enforcement.

(e) The COO may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ~~Ballot Measure 37~~ ORS 197.352, and to assist in the development of a recommendation regarding appropriate relief if the claim is found to be valid.

(f) The COO shall prepare a written report, to be posted at Metro's website, with the determinations required by subsection (b) and (d) of this section and the reasoning to support the determinations. The report shall include a recommendation to the Metro Council on the validity of the claim and, if valid, whether Metro should compensate the claimant for the reduction of value or waive the regulation. If the COO recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the Regional Framework Plan.

(g) The COO shall provide the report to the Council, the ~~owner~~ claimant, the city or county with land use responsibility for the property, and other persons who request a copy. If ~~the COO determines that~~ the Council adopted the regulation in order to comply with state law, the COO shall send a copy of the report to the Oregon Department of Administrative Services.

2.21.050 Hearing on Claim before Metro Council

(a) The Metro Council shall hold a public hearing on ~~the~~ a claim that satisfies the prerequisites of Section 2.21.040(b) before taking final action. The COO shall schedule the hearing for a date prior to the expiration of 180 days after the filing of a completed claim under Section 2.21.030.

(b) The COO shall provide notification of the date, time and location of the public hearing at least ~~25~~ 20 days before the hearing to the claimant, owners and occupants of property within 500 feet of the subject property, the local government with land use planning responsibility for the property and any person who requests notification. The notification shall indicate that a copy of the COO's recommendation under Section 2.21.040 is available upon request.

2.21.060 Action on Claim by Metro Council

(a) After the public hearing, but not later than 180 days after the filing of a claim under Section 2.21.030, the Metro Council shall consider the COO's recommendation and:

- (1) Determine that the claim does not qualify for compensation;
- (2) Determine that the claim qualifies for compensation and provide relief in the form of compensation or enhancement of the value of the property or decide not to apply the land use regulation; or
- (3) Determine that the claim qualifies for compensation and resolve to modify or remove the land use regulation.

(b) The Council shall take the action that is most consistent with the purpose of this chapter and the Regional Framework Plan.

(c) The Council shall issue an order with its decision and direct the COO to send the order to the claimant, the city or county with land use responsibility for the property, persons who participated at the hearing held under Section 2.21.050, other persons who request a copy, and the Oregon Department of Administrative Services if the Council adopted the land use regulation to comply with state law.

2.21.070 Conditions on Compensation or Waiver

(a) The Metro Council may place any conditions on its action under Section 2.21.060, including conservation easements and deed restrictions, that are appropriate to achieve the purposes of this

chapter. The Council shall place a condition on a decision under Section 2.21.060(a)(2) or (3) that the decision constitutes a waiver by the claimant of any further claims against Metro under Measure 37 involving the subject property.

(b) Failure by a claimant to comply with a condition provides a basis for action to recover any compensation made or revoke any action by the Council under Section 2.21.060(a)(2) or (3).

2.21.080 Fee for Processing Claim

(a) The COO may establish a fee to be paid by a person filing a claim at the time the person files the claim. The fee shall be based upon an estimate of the actual cost incurred by Metro in reviewing and processing claims. The COO may waive the fee if the claimant demonstrates that the fee would impose an undue hardship.

(b) The COO shall maintain a record of Metro's costs in reviewing and processing the claim. After final action by the Council under Section 2.21.060, the COO shall determine Metro's total cost and issue a refund to the claimant if the estimated fee exceeded the total cost or a bill for the amount by which the total cost exceeded the estimated fee.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1136, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.21 (CLAIMS UNDER MEASURE 37) FOR TREATMENT OF CLAIMS UNDER ORS 197.352 AND DECLARING AN EMERGENCY

Date: December 18, 2006

Prepared by: Richard Benner

BACKGROUND

The Metro Council adopted a process (now Metro Code Chapter 2.21) for treatment of claims under Measure 37 (now ORS 197.352), effective December 21, 2005. During the first two years following the effective date of the measure (December 2, 2004), Metro received 18 claims. Seven of those claims went through the full claims process under Chapter 2.21 to conclusion following a public hearing before the Council. During Metro's treatment of these claims, the Council revised its method for evaluating claims and determining whether Metro regulations had reduced the fair market values of claimants' properties. The methodology described in Chapter 2.21 no longer reflects the Council's practice.

By the terms of ORS 197.352, claims filed with government entities, including Metro, claims filed after two years following the effective date of Measure 37 are subject to different requirements from those filed earlier. Chapter 2.21 does not fully set forth these requirements for claims filed after the two-year deadline.

Other provisions of Chapter 2.21 are out of date as the result of codification of the measure in Oregon Revised Statutes and cases interpreting the measure.

In the last week prior to the expiration of two years following the effective date of the measure, Metro received 32 new claims. It is important that these claimants and the people of the region are aware of these changes to the extent they can be addressed in Metro's code on Measure 37 claims.

For these reasons, the Office of Metro Attorney proposes amendments to Metro Code Chapter 2.21.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition to the proposed amendments.
2. **Legal Antecedents:** Measure 37 is now codified at Oregon Revised Statutes 197.352. The Metro process for addressing claims is in the Metro Code, Chapter 2.21.
3. **Anticipated Effects:** The amendments can be expected to better inform claimants and members of the public about the process Metro will follow when addressing claims and the methods Metro will use in determining whether a challenged land use regulation has had the effect of reducing the fair market value of a claimant's property.
4. **Budget Impacts:** The amendments can be expected to reduce slightly the costs to claimants in filing a claim and the costs to Metro in processing the claim.

RECOMMENDED ACTION

The Office of Metro Attorney recommends that the Metro Council amend Metro Code Chapter 2.21 as proposed by Ordinance No. 07-1136